HIGH COURT OF UTTARANCHAL AT- NAINITAL.

Writ Petition No. 1923(S/S)2001
Old No. 16004 of 1999

Kamlesh Chandra Pandey S/o Sri Shiv Nandan Pandey,
Teacher, Chetram Shah Thulgharia Inter College,
Nainital. ….Petitioner.

Vs.

State of U.P., through
The Director of Education, Madhyamik,
Directorate of Education, Allahabad,
And two others. ….Respondents.

Sri Manoj Tewari, learned counsel for the petitioner,
Learned Standing counsel for the respondent nos 1 and 2,
Sri C.K. Sharma, Adv. for respondent no. 3.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri Manoj Tewari, learned counsel for the petitioner, Sri B.D., Kandpal, learned Standing Counsel for respondent nos. 1 & 2 and Sri C.K. Sharma, learned counsel for respondent no.3.

By means of this writ petition, the petitioner has prayed to issue a writ, order or direction in the nature of certiorari quashing the order dated 16.01.1999 passed by the respondent no.2/ District Inspector of Schools, Nainital, by which the respondent no. 2 has refused the claim of the petitioner, as forwarded by the Committee of Management for promotion on the post of Lecturer under 50% quota.

Submission of the petitioner is that he was appointed on 13.10.1987 as Assistant Teacher C.T. Grade in C.R.S.T. Inter College, Nainital on ad-hoc basis. When the Principal of the College died on 18.11.1992 than the Biology Lecturer was given ad-hoc promotion to the post of Principal, which resulted in vacancy on the post of Biology Lecturer in the Institution. Since the petitioner was the only qualified person, who can be appointed and promoted to the post of Biology Lecturer, therefore, the petitioner was given charge of Biology Lecturer by the Committee of Management. After retirement of on Sri A.N. Singh, the in-charge Principal, who was earlier the Biology Lecturer, the post of Biology Lecturer fell vacant permanently on 30.06.1998. The Committee of Management sent proposal to the District Inspector of School for promotion of the petitioner on the post of Biology

Lecturer under Rule 14 of U.P. Secondary Services Regulation Board Rules 1998. This proposal was refused by the DIOS on the ground that the petitioner does not fulfill the eligibility conditions for promotions to the post of Biology Lecturer, as he has not completed five years' regular service in the feeding cadre i.e. the post of L.T. Grade Teacher.

Contention of the petitioner is that the C.T. Grade was declared dying cadre since 1989. It has been further submitted that pursuant to the judgment passed by the Allahabad High Court in writ petition no. 5545 of 1992, all the C.T. Grade Teacher, who have on or after 19th February 1991, completed five years' service in L.T., Grade Teacher, certainly they shall be entitled to all the consequential benefits. In view of the Govt. order, all the C.T. Grade Teacher, after declaration of the C.T. Grade as a dying cadre, were merged with the cadre of L.T. Grade Teacher. In view of the aforesaid judgment, the services of the petitioner should have been treated as merged with the L.T. Grade Teacher, after five years from 19.02.1991 and thus, the petitioner was entitled to be promoted on the post of Biology Lecturer as his services have been merged with the L.T. Grade on completion of five years in C.T. Grade.

Learned Standing Counsel has submitted that under the rules, 50% post are to be filled by way of promotion and rest of the post by way of direct recruitment. In this regard, learned counsel for the petitioner has submitted that there are ten posts of Lecturers in the Institution and four posts, which are to be filled by way of promotion, are lying vacant.

In the circumstances, it is provided that if any post of Lecturer under 50% promotion quota is lying vacant, the case of the petitioner shall be considered for promotion on the post of Biology Lecturer according to the Rules.

For the reasons stated above, the writ petition is allowed. No order as to costs.

(M.M. Ghildiyal, J.)

July 28, 2004:

NCM: